

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ARMANDO AGUILAR,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
WEI EQUIPMENT, et al.,	:	
Defendants.	:	No. 03-1751

MEMORANDUM AND ORDER

J. M. KELLY, J.

OCTOBER , 2004

Presently before the Court is third-party Defendant Weiler & Company, Inc.'s ("Defendant") Motion for Summary Judgment (Doc. No. 39), Plaintiff Armando Aguilar's ("Plaintiff") response (Doc. No. 43), and Defendant's reply (Doc. No. 44) thereto. Plaintiff filed a Complaint in this matter seeking damages arising from a workplace injury. Plaintiff alleges the injury was caused by a defectively designed and manufactured "saw conveyor" (the "conveyor"). Defendant, the alleged manufacturer of the conveyor, moves for summary judgment under theories of Assumption of the Risk and Product Identification. For the following reasons, Defendant's Motion for Summary Judgment is **GRANTED**.

I. BACKGROUND

On October 23, 2000, Plaintiff was working at the food processing plant of DeVault Packing Company ("DeVault").¹ Plaintiff's work responsibilities included the carrying and

¹ DeVault is the purchaser of the conveyor that injured Plaintiff's left hand.

emptying of meat boxes into the container-like portion of the conveyor. The meat would then be sliced by a rotating blade within the conveyor's container.

The conveyor's container has a drainage hole that is uncovered when cleaned, but covered when the conveyor is in operation.² This hole is known as a "drain gate hole." On the morning of Plaintiff's injury, Plaintiff noticed the cover to the drain gate hole fall to the floor while the conveyor continued to operate. Plaintiff observed that this caused the drain gate hole to leak meat. In an effort to stop the meat leakage, Plaintiff grabbed the cover and attempted to reattach the drain gate hole without turning off the conveyor. As Plaintiff began to reattach the drain gate's cover, he stuck his finger in the drain gate hole. The rotating blade of the conveyor, which was in close proximity to the drain gate's hole, caught hold of Plaintiff's gloved hand and pulled Plaintiff's left hand further into the conveyor. As a result, Plaintiff's "distal phalanx of his middle finger of his left hand" was amputated. (See Compl. ¶ 10.)

II. STANDARD OF REVIEW

Pursuant to Federal Rule of Civil Procedure 56(c), summary

² The drain gate is a hole of approximately 2 1/2 to 3 inches in diameter that DeVault employees uncover when cleaning the conveyor so that water can drain out. (Pl.'s Dep. p. 38, ll. 5-24; Id. p. 38, ll. 14-16.)

judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In resolving a motion for summary judgment under Rule 56, this Court is required to determine whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In making this determination, the evidence of the nonmoving party is to be believed and the district court must draw all reasonable inferences in the nonmoving party's favor. Id. at 255. The movant bears the initial responsibility of informing the court of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Chelates Corp. v. Citrate, 477 U.S. 317, 323 (1986). Apart from this initial responsibility, Rule 56(c) requires the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Id. at 322.

III. DISCUSSION

Plaintiff's complaint sets forth a products liability action under theories of negligence and strict liability. Plaintiff contends that his injuries resulted from a malfunction of the conveyor. In response, Defendant argues that Plaintiff cannot recover in this matter because he assumed the risk of amputation when he chose to stick his hand in the open drain gate hole.

Under Pennsylvania law, assumption of the risk is a complete defense to cases of both negligence and strict liability. See Ferraro v. Ford Motor Co., 223 A.2d 476, 478 (Pa. 1966); see also Dillinger v. Caterpillar, Inc., 959 F.2d 430, 445 (3d Cir. 1992) (reviewing Pennsylvania law). In a products liability action, an injured plaintiff will be found to have assumed the risk of danger if he "knows of the defect and voluntarily and unreasonably proceeds to use the product or encounter a known danger." Ferraro, 223 A.2d at 478. Assumption of the risk, therefore, is a subjective standard that requires a plaintiff to first understand the specific risk of danger posed by his choice of action and then willingly act in the face of that danger. See Mucowski v. Clark, 590 A.2d 348, 350 (Pa. Super. Ct. 1991) (stating "[v]oluntary assumption of the risk involves a subjective awareness of the risk inherent in an activity and a willingness to accept it").

After a thorough reading of Plaintiff's deposition testimony

presented in support of Defendant's Motion for Summary Judgment, we find that reasonable minds could not differ that Plaintiff voluntarily assumed a known risk. See Staymates v. ITT Holub Industries, 527 A.2d 140, 146 (Pa. Super. 1987). Therefore, Plaintiff has lost his right to recover in this action.

Plaintiff testified that he understood that he should never place his hands inside any part of the conveyor. (Pl.'s Dep. p. 54, ll. 21-23; Id. p. 55, ll. 12-15.) When shown a warning sticker from the conveyor, Plaintiff testified that he understood the meaning of the word "danger" on the sticker and that the sticker's picture indicated that he could lose his fingers while working around the conveyor. (Id. p. 21, ll. 7-24.)³

Plaintiff testified he knew prior to his accident that the conveyor contained a turning blade that would slice through the boxed meat. (Id. p. 19, ll. 1-23; Id. p. 20, ll. 2-4.) Plaintiff testified that he could see the rotating blade each time he put

³ It remains undisputed that the conveyor contained warning stickers. DeVault's Vice-President of plant operations, Henry Jankowski ("Jankowski"), responded to the report of Plaintiff's accident and located Plaintiff's severed finger in the conveyor. Jankowski testified at his deposition that there were two conveyors in the area where Plaintiff was injured. (Jankowski Dep. p. 13, ll. 3-5.) Both conveyors had similar warning stickers displayed. (Id. p. 15, ll. 10-15.) Jankowski identified two locations on the conveyor at issue in this matter that at the time of Plaintiff's accident displayed warning stickers. (Id. p. 27, ll. 17-19.) The conveyor's stickers warned that moving parts could amputate fingers in Spanish, English and pictorially. (Id. p. 27, ll. 8-21.) Plaintiff was shown these stickers in his deposition and did not affirmatively dispute their existence on the conveyor.

frozen meat into the conveyor. (Id. p. 20 lines 2-5; Id. at p. 54, ll. 9-12.) Plaintiff also testified that because he had at least twice before cleaned the conveyor, he was familiar with the design of the conveyor, its drain gate hole, and the screw-like cover to that hole. (Id. p. 23, ll. 12-25; Id. p. 40, ll. 3-21.)

Plaintiff testified that he saw the drain gate hole cover fall to the floor just before the time of his injury. (Id. p. 52, ll. 3-6.) Plaintiff testified that meat began to leak out of the drain gate hole. (Id. p. 23, ll. 4-16.) In response, Plaintiff attempted to reattach the cover while the conveyor was in operation. (Id. p. 41, ll. 16-18.) While attempting to reattach the cover, he placed his finger inside the conveyor through the drain gate hole. (Id. p. 24, ll. 19-25; Id. p. 25, l. 1; Id. p. 39, ll. 23-24; Id. p. 52 ll. 7-14; Id. p. 55, ll. 16-19.)⁴ As a result of Plaintiff placing his finger inside the hole while the conveyor was in operation, the rotating blade within the conveyor amputated Plaintiff's distal "phalanz of his middle finger of his left hand." (See Compl. ¶ 10.) Plaintiff did not present any evidence from which it could be inferred that he was responsible for attaching the drain gate hole cover while the conveyor was in operation.

We find that Plaintiff had sufficient experience with the

⁴ Plaintiff testified that the drain gate hole is part of the conveyor. (Id. p. 24, ll. 24-25; Id. p. 25, l. 1.)

conveyor to know both the location and dangerous nature of its blade when functioning. Plaintiff's testimony that he knew not to stick his fingers anywhere inside the conveyor, which includes the conveyor's drain gate hole, demonstrates his knowledge that the conveyor posed a serious risk of amputation. The fact that Plaintiff had experience cleaning the conveyor, which involved removing the drain gate hole's cover while the conveyor was not in operation, emphasizes his intimate knowledge with the rotating blade's dangerous proximity to the drain gate hole. Moreover, Plaintiff's testimony that on more than one occasion he watched the rotating blade slice through frozen meat, further indicates that he was cognizant of the dangerous strength of the blade.

No evidence was presented from which this Court could conclude that Plaintiff's actions were involuntary. Plaintiff admitted that his attempt to reattach the cover was in an effort to satisfy his immediate desire to stop the meat leakage. Reasonable minds could not differ that Plaintiff was subjectively aware of the "known danger" before he voluntarily proceeded to stick his hand both near and inside the conveyor's drain gate hole. We, therefore, find that he assumed the risk of his injury.⁵

⁵ We find that Plaintiff's self-serving statement that he does not remember if the conveyor had a sticker warning of amputation is inadequate to overcome his admissions regarding the risk the conveyor posed to his fingers. See Bartkewich v. Billinger, 247 A.2d 603, 605-06 (Pa. 1968) (finding that a

IV. CONCLUSION

Plaintiff's deposition testimony demonstrates his subjective awareness of the risk of amputation to his fingers from the conveyor's rotating blade. Plaintiff's decision to place his fingers near the drain gate hole in his effort to re-cover the hole while the conveyor was still in operation was both voluntary and unreasonable. Thus, taking the evidence in the light most favorable to the Plaintiff, we find that no genuine issues of fact remains, and Defendant must prevail as a matter of law. As we grant the Motion for Summary judgment on this basis, we do not need to reach Defendant's remaining arguments.

specific instruction about the danger is unnecessary where a plaintiff "voluntarily did exactly what obviously was dangerous - reached into an operating glass breaking machine").

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O R D E R

AND NOW, this day of October 2004, after consideration of third-party Defendant Weiler & Company, Inc.'s ("Defendant") Motion for Summary Judgment (Doc. No. 39), Plaintiff Armando Aguilar's response (Doc. No. 43), and Defendant's reply (Doc. No. 44) thereto it is **ORDERED** that Defendant's Motion for Summary Judgment (Doc. No. 39) is **GRANTED**.

The Clerk of Court shall enter judgment in favor of Defendants Weiler & Company, Inc., WEI Equipment, MECO Inc., and DeVault Packing Company, and against Plaintiff Armando Aguilar.

BY THE COURT:

JAMES MCGIRR KELLY, J.